

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON HUMAN SERVICES**

**Call to Order:** By **CHAIRMAN ARLENE BECKER**, on March 16, 2005 at 3:00 P.M., in Room 472 Capitol.

#### **ROLL CALL**

##### **Members Present:**

Rep. Arlene Becker, Chairman (D)  
Rep. Tom Facey, Vice Chairman (D)  
Rep. Don Roberts, Vice Chairman (R)  
Rep. Mary Caferro (D)  
Rep. Emelie Eaton (D)  
Rep. Gordon R. Hendrick (R)  
Rep. Teresa K. Henry (D)  
Rep. William J. Jones (R)  
Rep. Dave McAlpin (D)  
Rep. Tom McGillvray (R)  
Rep. Mike Milburn (R)  
Rep. Ron Stoker (R)  
Rep. Pat Wagman (R)  
Rep. Bill Warden (R)  
Rep. Jonathan Windy Boy (D)

**Members Excused:** Rep. Art Noonan (D)

**Members Absent:** None.

**Staff Present:** Susan Fox, Legislative Branch  
Mary Gay Wells, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

##### **Committee Business Summary:**

|                        |                   |
|------------------------|-------------------|
| Hearing & Date Posted: | SB 21, 3/10/2005  |
|                        | SB 322, 3/10/2005 |
|                        | SB 433, 3/10/2005 |
|                        | SB 479, 3/10/2005 |
| Executive Action:      | HB 643 DPAA       |

**HEARING ON SB 322**

**Sponsor: SEN. KIM GILLAN, SD 24, BILLINGS**

**Opening Statement by Sponsor:**

**SEN. KIM GILLAN** opened the hearing on **SB 322**. The bill deals with a narrow situation that speaks about the relationship between a health care provider who performs a medical exam known as an independent medical exam (IME). The crux of the bill is on Lines 15-19. In a civil lawsuit where a person's medical condition is an issue, the other party has a right to have the person examined by another physician. This third-party examination is known as an IME. She gave some background history. The bill makes it clear that when a physician performs an IME, he/she needs to exercise ordinary care in advising an examinee of the examination results (Line 13). An IME physician has no duty to discover medical conditions unrelated to the medical condition at issue (Line 14). An IME physician has a duty to inform a person of the likely diagnoses the physician reasonably considers (Line 15). She gave an example.

**{Tape: 1; Side: A; Approx. Time Counter: 0 - 6.9}**

**Proponents' Testimony:**

**Pat Melby, Montana Medical Association**, concurred with the sponsor, and said that the bill is to clarify a decision by the Montana Supreme Court on the Webb Decision in 1998. MMA had asked the sponsor to introduce a bill that removed the second part of the Supreme Court's decision. The Montana Trial Lawyers were not in agreement. MMA worked with the Montana Trial Lawyers and put language into the bill which is a compromise.

**{Tape: 1; Side: A; Approx. Time Counter: 6.9 - 9.2}**

**Roger Williams, Neurologist, Billings**, spoke in favor of the bill and gave a thorough testimony of the Court's decision and what it meant to the medical community and how it affected his decision to do IME's. He submitted his written testimony.

**EXHIBIT** (huh58a01)

**{Tape: 1; Side: A; Approx. Time Counter: 9.2 - 11}**

**Tom Ebzery, Attorney, St. Vincent Healthcare, Holy Rosary, St. James, and Memorial**, stood in support of the bill.

**Mike Schweitzer, M.D., Laurel, Rocky Mountain Health Network**, stood in support of the bill. He informed the Committee that he did not do IME's, but physicians in the Network informed him that if the bill did not pass, they would have to be very cautious to even consider doing IME's.

**Al Smith, Montana Trial Lawyers Association**, supported the bill with the amendments from the Senate. He told the Committee that **Barbara Ranf, Montana Chamber of Commerce**, was supportive of the bill also.

*{Tape: 1; Side: A; Approx. Time Counter: 11 - 13.3}*

**Mark Taylor, Montana Hospital Association**, urged a do pass recommendation.

**Leo Berry, Utah Medical Insurance Association**, was supportive of SB 322.

**Mona Jamison, Montana's Society of Orthopedic Surgeons and The Doctors' Company**, stood in strong support of SB 322.

**Joe Masurek, Blue Cross/Blue Shield of Montana**, concurred with previous testimony.

**Jim Aherns**, spoke in favor of the bill on behalf of **Jani McCall** from **Deaconess Billings Clinic**.

*{Tape: 1; Side: A; Approx. Time Counter: 13.3 - 15.2}*

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. TERESA HENRY** asked if the bill would include physician assistants and nurse practitioners. **SEN. GILLAN** believed that was correct because that is why the term health care provider was used. **Ms. Fox** read from statute that health care provider has meaning provided in 27-6-103: "Physician, a dentist, a podiatrist, or a health care facility...."

**REP. TOM MCGILLVRAY** asked **Dr. Williams** what a complete solution to the problem might be. **Dr. Williams** replied that his preferred solution would be to have the responsibility of reporting the findings of the IME put on the third party who contracted for the examination rather than on the physician. When the physician is in a position of advising a patient about diagnoses, that physician is at risk if there is not another physician in a position to take the advise forward. He gave some examples.

*{Tape: 1; Side: A; Approx. Time Counter: 15.2 - 19.3}*

**Closing by Sponsor:**

The Sponsor closed. Rep. Roberts will carry the bill.

**{Tape: 1; Side: A; Approx. Time Counter: 19.3 - 20.3}**

### HEARING ON SB 21

**Sponsor: SEN. DUANE GRIMES, SD 39, CLANCY**

#### **Opening Statement by Sponsor:**

**SEN. DUANE GRIMES** opened the hearing on **SB 21**. The bill was crafted to help the medical malpractice liability crisis. The more that medical practitioners have medical malpractice lawsuits hanging over them, the more they will be forced into defensive medicine with unnecessary treatments that drive the costs out of sight. SB 21 would allow a claimant in a medical malpractice case to show by a majority of evidence that medical negligence had reduced chances of recovery. He continued to explain the bill. It was difficult to understand.

#### **Proponents' Testimony:**

**Pat Melby, Montana Medical Association**, stood in support of SB 21. The bill attempts to clarify another Montana Supreme Court decision of 1985 in the case of Aasheim v. Humberger. Prior to that case, if a patient's chance of recovery was reduced from 40% to 30% due to negligent treatment by the physician, the physician would not be liable at all. The Court made the decision that the physician would be liable in that case for a reduction in the individual's chance of recovery from that particular medical condition. The Court said that the physician is liable but it failed to take the next step. They failed to explain that, in that situation, the health care provider would be liable for that small decrease in the chance of recovery and not for 100% of damages. The MMA had asked for the bill to say the damages would be measured proportionately to the decrease in the chance of recovery. The trial lawyers proposed the amendment on the bill and the amendment made good sense. If prior to the negligent act or omission of the health care provider and the chance of recovery was more than 50%, the provider would be liable for 100% of the damages described in Subsection 1 of Section 1 of the bill. But if prior to the negligent act or omission and the chance of recovery is less than 50%, damages would be measured proportionately based on the decrease in the chance of recovery.

**{Tape: 1; Side: A; Approx. Time Counter: 20.3 - 30.1}**

**Mark Taylor, Montana Hospital Association**, urged support of the bill. He also spoke on behalf of St. Vincent's Health Care and Deaconess Billings Clinic.

**Roger Williams, M.D., Billings**, spoke in favor of the bill and felt it had a rational approach to assessing a claim for loss of chance and for helping to more accurately assess a monetary remedy for it. He submitted his written testimony.

**EXHIBIT** (huh58a02)

**Leo Berry, Utah Medical Insurance Association**, stood in support of the bill.

**Al Smith, Montana Trial Lawyers Association**, said that the language in the bill was drawn up by lawyers on both the plaintiff and defense side. The language makes sense to them and they are the ones that have to use it. It may not make sense to others, but they thought it was a fair balance.

*{Tape: 1; Side: A; Approx. Time Counter: 30.1 - 32}*

**Joe Masurek, Blue Cross/Blue Shield of Montana**, stood in support of the bill on behalf of their provider members.

*{Tape: 1; Side: B; Approx. Time Counter: 0 - 0.4}*

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. EATON** questioned if the wording was taken from Workers' Compensation language where it deals with the amount of damages.

**SEN. GRIMES** replied that there are other statutes in the Code that have similar language. **Mr. Smith** said that this type of language is in Workers' Compensation and comes from the basic common law principles of negligence.

**REP. WAGMAN** spoke and said that as a paramedic and firefighter, he had seen people in emergency situations die after heroic efforts to save their lives. His question was, "Are doctors performing defensive medicine before they actually address the emergency situation?" **Dr. Williams** agreed and gave an example.

*{Tape: 1; Side: B; Approx. Time Counter: 0.4 - 7.9}*

**REP. CAFERRO** asked for an explanation of Page 1, Lines 26-28.

**Mr. Smith** replied that in all civil litigation, the plaintiff in a lawsuit has the obligation of going forward to prove that the

negligence was "more likely than not" that negligence caused the harm. Lines 26-28 state that if the plaintiff proves it was more likely than not caused by the health care provider, then they get total damages. What Page 1, Lines 29-30 and Page 2, Lines 1-2 states is: if you are below that "more likely than not," you would not get 100% of the damages. The damages would be reduced proportionately. More discussion followed.

***{Tape: 1; Side: B; Approx. Time Counter: 7.9 - 12.3}***

**REP. ROBERTS** followed up on **REP. WAGMAN'S** questions. **Dr. Williams** said that to protect themselves from a lawsuit, they practice defensive medicine. He spoke at length on how he has handled his practice.

***{Tape: 1; Side: B; Approx. Time Counter: 12.3 - 14.7}***

**REP. HENRY** said that if a person, in good health, was in an accident, and the person seemed to be making good progress, and a negligent act was performed, that person's family would receive damages based on the fact that the assumption was the person was going to recover, but the negligent act happened and the person died. **Mr. Melby** replied that was true. The chances of recovery in that case would be somewhere between 50% and 100% and they would get 100% of damages.

**REP. HENRY** said, conversely, if someone with pre-existing multiple health problems had been in a bad accident, where it was determined they had less than a 50% chance of recovery, and a negligent act occurred by a health care provider, the amount of damages would be lower than 50%. **Mr. Melby** replied that the damages would then be decided proportionately.

***{Tape: 1; Side: B; Approx. Time Counter: 14.7 - 17.3}***

**Closing by Sponsor:**

**SEN. GRIMES** said, "It could be argued that without this language in place, the law would say, if any chance of recovery had been affected by a negligent act, there would be 100% recovery of damages." He urged passage of the bill. He also encouraged other legislators to become involved in tort reform.

***{Tape: 1; Side: B; Approx. Time Counter: 17.3 - 22.4}***

**HEARING ON SB 479**

**Sponsor: SEN. GREG LIND, SD 50, MISSOULA**

**Opening Statement by Sponsor:**

**SEN. GREG LIND** opened the hearing on **SB 479**. This bill would prevent a physician from billing his patient for pathology services that were provided by another physician and would require the pathology lab to either bill the patient directly or bill their insurer directly. He gave some examples where a physician would send tissue to a lab and the physician be charged a low fee for the pathology report. The physician would then turn around and mark it up two to three times and bill the patient. This is contrary to the American Medical Association's code of ethics. It is a practice that has been outlawed by Medicare and Medicaid since 1984. It also increases the total health care costs.

**{Tape: 1; Side: B; Approx. Time Counter: 22.4 - 24.6}**

**Proponents' Testimony:**

**Mr. Ebzery, Attorney, Montana Society of Pathologists and the College of American Pathologists**, stood in strong support of SB 479. He informed the Committee that the bill passed the Senate with a 50-0 vote and said that a number of states have passed similar types of law. He gave some examples of this kind of fraud.

**{Tape: 1; Side: B; Approx. Time Counter: 24.6 - 27.1}**

**Michael Brown, Pathologist, Billings**, gave his testimony and submitted a written copy. He also submitted a letter from Jeffrey Smith, MD, President, Montana Society of Pathologists.

[\*\*EXHIBIT\*\*](#)(huh58a03)

[\*\*EXHIBIT\*\*](#)(huh58a04)

**{Tape: 1; Side: B; Approx. Time Counter: 27.1 - 32. Mr. Brown continued on Tape: 2; Side: A.}**

**Mike Schweitzer, M.D., Laurel, Rocky Mountain Health Network**, stated that his group supports SB 479. He, himself, supports the bill as a patient.

**{Tape: 2; Side: A; Approx. Time Counter: 0 - 4.8}**

**Ben Blend, M.D., Bozeman**, gave his testimony and submitted the written copy.

[\*\*EXHIBIT\*\*](#)(huh58a05)

**{Tape: 2; Side: A; Approx. Time Counter: 4.8 - 12.2}**

**Pat Melby, Montana Medical Association**, concurred with the previous witnesses.

**Roger Williams, M.D. Billings**, stood in favor of the bill.

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. STOKER** asked if there were any penalties for those who would break the law if this bill is passed. **SEN. LIND** pointed to Page 2, Line 10, ".....pursuant to Title 37 may revoke, suspend, or refuse to renew the license of a physician or other practitioner of the healing arts who violates a provision of this section."

***{Tape: 2; Side: A; Approx. Time Counter: 12.2 - 14.3}***

**REP. STOKER** inquired how many times a physician would have to violate this unethical practice before this penalty would take effect.

**VICE CHAIRMAN ROBERTS** asked if the physician is being unethical if he gets a rebate from the pathologist. **Dr. Brown** said, "Yes." He said that in his practice, they direct bill almost all of their patients. A few of the doctors request the billing to go to them.

**VICE CHAIRMAN ROBERTS** inquired if physicians have fees tied in with Dr. Brown or does he bill independently. **Dr. Brown** replied that the surgeon bills independently. They have no arrangements with referring physicians.

**Closing by Sponsor:**

**SEN. LIND** followed up on REP. STOKER's question. One complaint would take the physician to the Board of Medical Examiners for a screening panel. Two complaints would be bad news for the physician and the penalties would be started.

***{Tape: 2; Side: A; Approx. Time Counter: 14.3 - 20.4}***

**HEARING ON SB 433**

**Sponsor:** SEN. GREG LIND, SD 50, MISSOULA

**Opening Statement by Sponsor:**

**SEN. GREG LIND** opened the hearing on **SB 433**. This bill is a product of many hours of hard work by the Joint House Senate Health and Human Services Subcommittee from Senate Finance. The goal of this proposal is to improve quality of care and to save



money for individuals with developmental disabilities. He submitted a brochure, the Montana Needs Assessment (MONA), which he explained. There was a change in Montana as to how they fund developmental disabilities services. It used to be a block grant to providers to provide care for a number of individuals. Because of an audit from U.S. Centers for Medicare and Medicaid (CMS), it was mandated to include portability and choice. An individual would be evaluated and a monthly dollar benefit would be generated to provide for that person's needs. The MONA shows that for a particular person, \$4,250 is allowed. Under this program, the individual would shop from a menu. In this brochure, the individual has chosen services totaling \$3,433.28 leaving a difference of \$816.72. This would allow the individual to take half of the \$816.72 and put it into an account similar to a medical savings account. It would encourage participation by families, by communities to provide services, and to save money for a child when he/she became 18 and would have to pay for independent living, etc.

**EXHIBIT** (huh58a06)

***{Tape: 2; Side: A; Approx. Time Counter: 20.4 - 25.5}***

**Proponents' Testimony:**

**Jeff Sturm, Director, Developmental Disabilities Program**, said that this is a new idea. He gave some background history. MONA is a tool that helps the Department allocate resources. This bill is an incentive to individuals to be able to say, "I don't need that right now." Most children that age out of services do not have enough money to purchase enough services as an adult. This would allow them to put their savings into an account to be used later when they really need it. He explained how the accounts would be set up and was excited that the fiscal note was budget positive.

***{Tape: 2; Side: A; Approx. Time Counter: 25.5 - 30.6}***

**Roger Williams, M.D., Billings**, spoke in favor of the bill. He felt that this approach was more rational.

**Pat Melby, Montana Medical Association**, stood in support of this innovative bill.

***{Tape: 2; Side: B; Approx. Time Counter: 0 - 1.2}***

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. ROBERTS** asked if the Federal Government frowned on people holding money and receiving interest. **Mr. Sturm** said that would apply to Medicaid dollars but they are only going to be using General Fund portion dollars. When the money comes back into use, they will match it with Medicaid money.

**{Tape: 2; Side: B; Approx. Time Counter: 1.2 - 2.3}**

**REP. MCGILLVRAY** inquired if the total amount of \$816.72 would go into the savings account. **Mr. Sturm** responded that only half of the amount would go into the savings account. The other half would go back into other services.

**REP. EATON** wanted to know how the cost of the services was arrived at in the pilot program. **Mr. Sturm** replied that the cost of the services is based on a rate that is being developed. The MONA amount is determined by using the allocation tool from the Department.

**Ms. Fox** explained that on the rate commission bill, they used the process from the Developmentally Disabled Division (DD) who had, over the last biennium, developed a method that could perhaps be used to look at rates in other areas. This Division has gone through this, but many of the other divisions have not.

**SEN. LIND** said that this tool is used to generate an individual's benefit. The rates are now being set in the State for this program. Each subject will have a set rate.

**{Tape: 2; Side: B; Approx. Time Counter: 2.3 - 6.9}**

**REP. MCALPIN** asked about the technical note in the fiscal note which suggested striking language in Section 1 (3). He questioned whether the Department would be willing to do that.

**SEN. LIND** said that they had gone around and around on that language. They wanted to make sure that they were not denying needed care that would injure someone. There are provisions in the bill that would prevent them from denying all their benefits in order to hoard their allotted money.

**REP. MCGILLVRAY** inquired if all the rates were going to be the same or would they differ from provider to provider. **SEN. LIND** responded that the State will publish a fee schedule for Montana and this will allow an individual with a benefit to shop from provider to provider.

**{Tape: 2; Side: B; Approx. Time Counter: 6.9 - 9.9}**

**CHAIRMAN BECKER** asked if the pilot program was in effect at this time. **SEN. LIND** replied that there are two pilot programs going

on right now. One pilot has 160 individuals and will run for six months. If this bill is enacted, there will be another 50 individuals starting in the program with slight changes.

**CHAIRMAN BECKER** wondered if there was a concern for those who live outside of the seven big metropolitan areas. **Mr. Sturm** said there were concerns and rural areas are always a concern. He spoke about some of those concerns and how the Department was looking at them.

**Closing by Sponsor:**

The Sponsor closed.

REP. MCALPIN will carry the bill.

***{Tape: 2; Side: B; Approx. Time Counter: 9.9 - 15.1}***

**EXECUTIVE ACTION ON HB 643**

**Motion:** REP. ROBERTS moved that HB 643 DO PASS.

**Motion:** REP. ROBERTS moved that HB 643 BE AMENDED.

**EXHIBIT** (huh58a07)

**Discussion:**

**REP. ROBERTS** explained that on the amendments there were two modifications he would like to make. On Page 3, on the first line, strike "an all beverages" and insert "a." On Page 3, under Number 11 (4), strike "and gambling devices are present."

**Ms. Fox** went through the gray bill for the Committee (Exhibit 8). She explained the bill with the caveat that the actual amendments are what will rule. They have been edited and include the two changes that REP. ROBERTS just gave to the Committee. The "Whereas" clauses have been taken out of Section 2, made into a preamble and will not be codified as law. She explained that Section 2 would remain but with only the following: Section 2. Section 50-40-102, MCA, is amended to read: "50-40-102. Intent -- purpose. The legislature finds... (a) to protect the public health...(b) to guarantee the right...(c) to recognize that the...over the desire to smoke." This was found on Page 5 of the gray bill.

On Page 5 in the definition section, there is a new definition of bar. (1) Bar means an establishment with a (take out 'all beverages') license..." She continued her explanations.

**EXHIBIT** (huh58a08)

**{Tape: 2; Side: B; Approx. Time Counter: 15.1 - 27}**

**REP. WINDY BOY** asked how this bill would be enacted if the other non-smoking bill is passed. **Ms. Fox** replied that if both bills are passed and approved, the preemption in this bill would make a difference.

**REP. HENDRICK** asked about definitions under Section 3. In his area, most bars and restaurants are in the same area. The restrooms serve both facilities and are usually in the bar area which is the smoking area. He wondered how this would be handled under this bill. **Ms. Fox** was not sure.

**{Tape: 2; Side: B; Approx. Time Counter: 27 - 32}**

**REP. MCALPIN** felt there would be no regulation of the bathrooms.

**{Tape: 3; Side: A; Approx. Time Counter: 0 - 0.3}**

**Mark Staples** responded that if the bill has to be tied down to every possible complication that could arise by unreasonable application, the bill won't be able to do it. He felt that the scenario presented by **REP. HENDRICK** would be an unreasonable application. It could present a problem, but he would like to think that is not what is being addressed in the bill.

**REP. WARDEN** inquired about "guaranteeing the right of nonsmokers to breathe smoke-free air" on Page 5 of the gray bill. He did not think that was possible to do. **Mr. Staples** responded that some of the language was difficult to deal with. He hoped that language would not set taverns and casinos up for a lawsuit. He stated that the awareness, the culture and the society has changed, but it can't turn on a dime. It is going to take time.

**{Tape: 3; Side: A; Approx. Time Counter: 0.3 - 6}**

**REP. MILBURN** questioned the resurrection of the bill since it was not an appropriation bill. **Ms. Fox** responded that it was reclassified as a revenue bill. Both in the repealer and in the new section concerning penalties, it addresses revenue which would come from the penalties.

**REP. MILBURN** asked about Page 7, where it states the proprietor may not allow any member of the public who is under 18 years of age to be present in any area of the establishment in which smoking is permitted and gambling devices are present. He reiterated the sentiments of **REP. HENDRICK**. He also spoke about the places where American Indians can practice their religion

when it includes smoking. He was not sure how all this fit together.

**{Tape: 3; Side: A; Approx. Time Counter: 6 - 9.4}**

**REP. WINDY BOY** said that he had an issue with the word "religion." He felt that "cultural activities" would fit better because they don't have a religion but have a way of life. He was going to make a conceptual amendment.

**REP. MILBURN** asked that if Indians have an event, can they smoke anywhere at any time.

**REP. WINDY BOY** gave a history lesson of why Indians use pipes and smoking in their cultural activities. Elements like sweetgrass and sage are used in their ceremonies. It is not the same as smoking a cigarette.

**{Tape: 3; Side: A; Approx. Time Counter: 9.4 - 16}**

**CHAIRMAN BECKER** instructed the Committee that there are the "big amendments" (Exhibit 7). **REP. ROBERTS** had proposed two slight modifications to the "big amendment." She asked the Committee to vote on those slight modifications first.

**Ms. Fox** reminded the Committee of the two amendments.

**REP. WINDY BOY** thought they could put his conceptual amendment with the other slight amendments.

**REP. ROBERTS** then explained his slight previous amendments: On Page 5 of the gray bill, under Section 3. (1) strike "an all-beverages" and add "a." On Page 7 of the gray bill, under Section 4 (4) strike "and gambling devices are present." He added another amendment on Page 5 of the gray bill, under Section 2 (2) (b) strike "guarantee" and add "recognize."

**REP. HENDRICK** was very concerned about the restrooms in a bar having to be used by everyone who were in the restaurant portion of the building.

**Motion:** **REP. WAGMAN** moved to **SEGREGATE THE "WHEREAS" CLAUSES AND SECTION 2, PAGE 5, (2) (a), (b), AND (c).**

**REP. WAGMAN** explained that his motion would have three sections of amendments to be voted on: the "Whereas" clauses, Section 2 (a), (b), and (c) on the Gray Bill, and the rest of the amendments.

**CHAIRMAN BECKER** reviewed the previous motion. At this point, the "Whereas" clauses and Section 2 are segregated from the original

amendment. The "Whereas" clauses and Section 2 included the third amendment which replaced "guarantee" with "recognize."

**Ms. Fox** gave language that would address all issues of **REP. WINDY BOY's** amendment. She said, "(f)...a site that is being used in connection with the practice of cultural activities by American Indians that is in accordance with the American Indian Religion Freedom Act, 42 U.S.C. 1996 and 1996a." **REP. WINDY BOY** agreed with this new language and without objection, the Committee accepted this as a friendly amendment.

**CHAIRMAN BECKER** reiterated what the Committee would be voting on: 1) the amendments with the original two amendments by **REP. ROBERTS** and 2) **REP. WINDY BOY's** one friendly amendment.

**REP. ROBERTS** read a list of groups that endorsed the bill.

*{Tape: 3; Side: A; Approx. Time Counter: 16 - 25}*

**Vote:** Motion on main group of amendments with the two original modifications and **REP. WINDY BOY'S** amendment carried 13-3 by roll call vote with **REP. CAFERRO**, **REP. MILBURN**, and **REP. STOKER** voting no. **REP. NOONAN** and **REP. WARDEN** voted by proxy.

**Motion:** **REP. ROBERTS** moved that **HB 643 BE AMENDED TO INCLUDE THE "WHEREAS" CLAUSES AT THE INTRODUCTION OF THE BILL AND WILL NOT BE CODIFIED.**

**Discussion:**

**REP. WAGMAN** said that if any of the issues addressed in the Whereas clauses were taken to court, it could be argued that the validity of the clauses are endorsed by the Legislature. It shows legislative intent. He could not support these clauses.

**REP. MCALPIN** looked at the clauses differently and was in support of the amendment.

**REP. WINDY BOY** supported the amendment also.

**REP. ROBERT** did not think there was much disputation with the "Whereas" clauses. They stand as they are and should be able to sustain themselves under scrutiny.

*{Tape: 3; Side: A; Approx. Time Counter: 25 - 32}*

**Vote:** Motion carried 9-7 by roll call vote with **REP. BECKER**, **REP. HENDRICK**, **REP. MCGILLVRAY**, **REP. MILBURN**, **REP. STOKER**, **REP. WAGMAN**, and **REP. WARDEN** voting no. **REP. NOONAN** and **REP. WARDEN** voted by proxy.

*{Tape: 3; Side: B; Approx. Time Counter: 0 - 1}*

**Motion/Vote:** REP. ROBERTS moved that HB 643 BE AMENDED TO INCLUDE SECTION 2 AS PREVIOUSLY AMENDED WITH THE WORD "GUARANTEE" REMOVED AND "RECOGNIZE" ADDED. Motion carried 14-2 by voice vote with REP. CAFERRO and REP. STOKER voting no. REP. NOONAN and REP. WARDEN voted by proxy.

REP. STOKER questioned the ability to bring HB 643 forward after Day 45. Ms. Fox said that in the original bill on Page 7, Line 15 there was the Repealer, 50-40-109, which was a penalty section. By repealing that penalty, revenue could potentially be reduced which would make it a revenue bill.

*{REP. NOONAN returned to the hearing.}*

**Motion:** REP. ROBERTS moved that HB 643 DO PASS AS AMENDED.

REP. MILBURN expressed that many words had been added to the bill and he did not feel that the bill was the right way to go. He could not support the bill.

*{Tape: 3; Side: B; Approx. Time Counter: 1 - 9.6}*

REP. MCALPIN did not think the Committee should get too wrapped up in the details of "what if's." The gray bill had been looked at by the best experts on how to do this in a reasonable manner.

REP. MILBURN agreed with some of REP. MCALPIN's statements, but he did not think it wise to make a law in order to have someone break it to make the law reasonable. A law should be made so that all would abide by it.

*{Tape: 3; Side: B; Approx. Time Counter: 9.6 - 11.2}*

REP. CAFERRO said that she was voting against the bill. She is a Helena Legislator and Helena passed a clean indoor air ordinance by 68%. This bill, as amended, preempts the clean indoor air ordinance. She could not vote for a bill that goes against something her constituents so strongly supported. She did not agree with the premise that people could find another job if they did not want to be around people who were smoking.

*{Tape: 3; Side: B; Approx. Time Counter: 11.2 - 12.5}*

REP. MCGILLVRAY asked REP. MCALPIN to respond to REP. CAFERRO's statements. REP. MCALPIN responded that in his personal and political judgment, REP. BERGREN's bill was going to be signed into law within the month if this bill is not passed and that would immediately preempt Helena's ordinance. This bill is a compromise and an alternative to that scenario.

Vote: Motion carried 13-3 by roll call vote with REP. CAFERRO, REP. MILBURN, and REP. STOKER voting no. REP. WARDEN voted by proxy.

*{Tape: 3; Side: B; Approx. Time Counter: 12.5 - 13.4}*



**ADJOURNMENT**

Adjournment: 6:45 P.M.

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REP. ARLENE BECKER, Chairman

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MARY GAY WELLS, Secretary

AB/mw

Additional Exhibits:

**EXHIBIT ([huh58aad0.TIF](#))**